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The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

Judges versus Board of Dental Examiners

Licenses of dentists revoked by the Colorado State Board of Dental Examiners for alleged unprofessional conduct were restored by the trial court. The Supreme Court of Colorado sustains on the jurisdictional question (hence this: 8 P. (2d) 693, 696) and modifies and remands (in effect, decreeing suspension for one year or less). "Special counsel for the board argues that the action of the board should be conclusive upon the courts for the reason that a lawyer's training does not qualify a judge to understand the subjects of standards of conduct of dentists; * * *. From the standpoint of statutory construction alone, if this penal statute is too difficult and technical for any but the minds of the honorable dental examiners to comprehend, it is too abstruse to be a valid public act, too remote to apprise the dentists of their legal duties, and too mysterious for the courts to attempt to enforce. The statute to be valid must be clear enough so that it is understood, or is capable of being understood, by those who are affected by it. We hold that the act fulfills these conditions; if it did not, the dental board would be out of court on its own statement. Courts welcome the advice of experts in countless fields of human endeavor, but when doctors disagree, who but judges shall decide between them?"

Kenneth Kingsley

President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

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Talks on Foreign Corporations

A large amount of personal property is annually disposed of by foreign corporations in the various states of the Union on extended credit plans involving, in some cases the use of chattel mortgages, and in others, conditional sales. It may be generally said that the sale of goods in this manner does not constitute doing business by such foreign corporation, providing the buyer and seller remain independent of each other, that is, an agency is not created by the transaction, and the question is simply one involving credit for goods sold in interstate commerce. Also, if the original transaction is interstate commerce, collecting the purchase price of the goods sold, through enforcement of the provisions of the chattel mortgage or conditional sales contract, does not bring the corporation within the State.

In a transaction carried out by chattel mortgage, title passes outright to the buyer, who thereafter executes a mortgage conveying back the title, or giving a lien on the property to secure the purchase price; on the other hand, in a conditional sale, title never passes out of the seller, being retained for the purpose of such security, and the seller is divested of title usually only upon payment of the last installment. Chattel mortgages and conditional sales are generally covered by different statutory provisions. The Uniform Conditional Sales Act, adopted in a number of states is, of course, well known.

The filing of a conditional sales contract, or the recording of a chattel mortgage is a matter of importance if the seller wishes to charge third persons. Generally a purchaser from, or a creditor of, the buyer cannot be charged with notice, unless the conditional sales contract or chattel mortgage is a matter of record. It seems to be well established that only purchasers without notice should be protected; and it is also very generally held that creditors in order to claim protection must have been without notice, when their rights were fixed. Many cases hold that a purchaser *with* notice is not protected as against the mortgagee of an unrecorded mortgage, as recording is presumed to give constructive notice, which presumption is unnecessary when actual notice exists.

Consequently a foreign corporation selling its product in this manner, should give careful consideration to the statutory provisions of the various states relating to chattel mortgages and conditional sales contracts, especially those provisions relating to filing and recording, if it is desired to impress notice on third persons, for as a *general rule*, purchasers and creditors are not chargeable with notice unless the document is filed or recorded.

Domestic Corporations

Alabama.

Rescinding, for fraud, subscription to stock in corporation after insolvency thereof. The United States Circuit Court of Appeals, Fifth Circuit, reverses and remands in this "appeal from a decree in a suit brought by the receiver of a hopelessly insolvent life insurance company to foreclose a mortgage given by appellees in payment of 1,000 shares of the stock, denying foreclosure, and on cross-claim cancelling the mortgage for fraud in the procurement of the stock subscription." The court says: "While it is true that it is the American rule that the insolvency of a corporation does not of itself defeat the right of a defrauded stockholder to rescind his stock purchase contract, it is equally true that under that rule after insolvency declared and the appointment of a receiver, a stockholder who has delayed, as appellees have here, in the ascertainment and assertion of his rights, though he may be entitled to rescind as to the corporation, will be disentitled to do so as to the supervening creditors." (Then, citing cases): "This is certainly the rule in Alabama, and in the federal courts. We think it is generally conceded to be the rule elsewhere." Julian vs. Stewart et al., 56 F. (2d) 32. M. C. Stewart, of Birmingham, and W. L. Bryan, of Atlanta, Ga., for appellant. Douglass Taylor, of Huntsville, for appellees.

California.

The reserved power to alter corporation law in force at time corporation's charter is granted and the provision of the Federal Constitution re impairing the obligation of a contract. The California Constitution formerly provided that a director of a corporation shall be liable to its creditors for all moneys embezzled or misappropriated by its officers during the former's term of office. By the Constitution the power is reserved to the state to alter or repeal any law of the state concerning corporations. Action by a creditor "within the terms of the foregoing provision" against a director of a California corporation. Demurrer to the complaint was sustained; an appeal was taken; while appeal was pending the constitutional provision first referred to above was repealed. Respondent then moved to dismiss on the ground that because of the repeal the cause of action had abated. The State Supreme Court sustained this motion. The United States Supreme Court reverses (three Justices dissenting) holding that a contractual obligation arose between the creditor and the director ("The creditor extended credit to the corporation; and his action in so doing, under the state constitutional provision, brought into force for his benefit the constitutional obligation of the director, which by becoming a director, the latter had voluntarily assumed and, thereby, in the eye of the law, created against himself a contractual liability in the nature of a surety-

ship."), and the right to enforce it, having become vested, comes within the protection of both the contract impairment clause and the due process of law clause of the Federal Constitution. The Court says: "The authority of a state under the so-called reserve power is wide; but it is not unlimited. The corporate charter may be repealed or amended, and, within limits not now necessary to define, the interrelations of state, corporation and stockholders may be changed; but neither vested property rights nor the obligation of contracts of third persons may be destroyed or impaired. The right of this petitioner to enforce respondent's liability had become fully perfected and vested prior to the repeal of the liability provision. His cause of action was not *purely* statutory. It did not arise upon the constitutional rule of law, but upon the contractual liability created in pursuance of the rule. Although the latter derived its being from the former, it immediately acquired an independent existence competent to survive the destruction of the provision which gave it birth. The repeal put an end to the rule for the future, but it did not and could not destroy or impair the previously vested right of the creditor (which in every sense was a property right) to enforce his cause of action upon the contract." Coombes vs. Getz, 52 S. Ct. 435. Joseph L. Lewinson and W. H. Douglass, both of Los Angeles, and Nat Schmulowitz, of San Francisco, for petitioner. Alfred Sutro, of San Francisco, for respondent.

Connecticut.

Separate entities: corporation and stockholder owning practically all of stock. To the merits here we do not go. The Supreme Court of Errors of Connecticut after stating that the separate entity of a corporation may be disregarded if the corporation is a mere sham or device to accomplish some ulterior purpose or is no more than an instrumentality or agent of another corporation or individual owning all or most of the stock, or where the purpose is to evade some statute or accomplish some fraud or illegal purpose, continues: "The mere fact that the corporation is organized to take over the property and business of an individual, to whom is issued, and who continues to hold and control, substantially all its stock, is no sufficient basis for disregarding the corporate entity, if the legal requirements of the statutes governing it are complied with. The limitation of personal responsibility in the conduct of a business, freedom from the necessity of continuous personal control and responsibility, the desirability that the business may be carried on without interruption in case of illness or death, are all legitimate ends in harmony with the purposes for which corporations are permitted to be established; and, so long as no circumstances such as those we have indicated are present, courts cannot look through the corporation to the stockholder." Hoffman Wall Paper Co. vs. City of Hartford, 159 A. 346. Roger Wolcott Davis, of Hartford, for the city. Alexander W. Creedon, of Hartford, for the company.

Massachusetts.

Stock issued and amount paid thereon—and the annual report of condition. Here, a question of liability of directors on account of an alleged false report of condition (certainly entirely without dishonest intent); the law in regard to liability in such a case was materially changed in 1931 subsequent to the time of entry of final decree; we pass the question of liability of defendants, here, and go to the question—was a particular report false and was it known to be false? Massachusetts General Laws, Chapter 156, Sec. 47, prescribing annual reports of condition of business corporations, calls for a statement as to issued and outstanding stock, "and the amount then paid thereon." The report, here, stated that of the total outstanding stock (10,000 $10 par value shares) stock had been issued and paid for, for "Services—Organization and Promotion $24,500, Expenses—Promotion $24,500." The Massachusetts law provides that stock may be issued for "services or expenses." The Supreme Judicial Court of Massachusetts, Suffolk, says: "Those words import substantial values. The context implies that, where things other than cash are taken in return for the issue of stock, they shall be received by the corporation at a value bearing fairly accurate relation to the par value of the stock issued in exchange therefor." If the report, in this respect, "is to be a genuine force and not a vain form, the word 'paid' therein must be construed, as to things other than cash, to mean a payment at a reasonable and honest valuation and not at one having only a trivial relation to the truth." The articles of organization show that the stock was actually issued as stated in the annual report. The court says: "The services in organization and promotion of a corporation must be placed at a value bearing some rational relation to the par value of the stock issued therefor. These statements in the articles of organization were manifestly false." If as matter of law the statement in the articles of organization was false, then as matter of law the repeating statement in the report of condition was false. "The finding is that, since the defendants were familiar with all the facts relating to the issue of stock, 'if the statement was false they knew it to be false.' That finding must stand." H. B. Humphrey Co. vs. Pollack Roller Runner Sled Co., et al., 180 N. E. 164. Appearances: S. H. Babcock, and J. F. Neal, both of Boston.

Michigan.

On a corporation becoming surety for another. In connection with a certain contract covering the installation of a sales stimulating scheme or system entered into between Michigan and Illinois parties notes were accepted in partial payment. One of the main considerations leading the subscriber to enter into the contract in respect of which he gave the notes was the furnishing of a surety bond guaranteeing a certain degree of success from the use of the system. An Illinois corporation became surety on the bond; the same com-

pany purchased the notes; the suit here is on the notes. Judgment below for defendant; the Supreme Court of Michigan reverses and remands for a new trial. One defense is that the Illinois corporation that became surety had no right to act as surety, and, so, that "the contract was breached by its own act, prior to the time it purchased the note." The court, after stating that "a corporation has not the right to become surety for another except where such right is given either expressly or impliedly by its charter," says: "In order to prove plaintiff's lack of authority to become surety, the defendant introduced a letter from the Secretary of State of Illinois, in which he stated that plaintiff is an Illinois corporation and that this 'company has no authority to act as surety for others.' The letter simply shows the legal conclusion by the Secretary of State of Illinois, and was not proper evidence of plaintiff's corporate purposes or its liability to become a surety on the bonds of others." This is given as the reason for the reversal. Lincoln Inv. Co. vs. Metros, 241 N. W. 166. Lindley & Delaney, of Detroit, for appellant. Henry C. L. Forler, of Detroit, for appellee.

Corporation itself may sue to recover share-certificates fraudulently issued as stock dividend and for accounting of cash dividends subsequently paid on the stock so issued. Here, in an action as indicated by the caption, the corporation prevailed below. Because the statute of limitations had run against plaintiff the Supreme Court of Michigan reverses and dismisses the bill. To the merits we do not go. The court says: "On the question of whether the corporation can maintain this bill, appellants have developed the theory of a decision, Old Dominion Copper Co. vs. Lewisohn, 210 U. S. 206, and stress the points, viz.: The corporation was not injured, none of its assets being disbursed by the distribution of stock; no creditor was harmed; the preferred stockholders were not prejudiced and have not complained, having the same security behind their stock as they had before; and the then common stockholders partook of the dividend equally or ratably and did not, and could not complain. And appellants urge that up to this point at least no one was harmed and no one could complain. They further contend that the fact that sale of other remaining stock to the public (after the revaluation of a lease on the books, an increase in authorized capital, and the payment of the stock dividend to the extent of a part of such increase) was then contemplated and later sold and issued does not change the situation to give rise to a right in the corporation to maintain this bill. Assuming, for sake of argument, this to be the effect of the holding in the cited case, it is to be noted that this court does not follow it." Citing one of its own prior decisions and other authorities, it is stated: "Under the authority herein cited, redress may be had at the suit of the corporation itself." Pontiac Packing Co. vs. Hancock et al., 241 N. W. 268. George E. Nichols, of Ionia (A. A. Worcester, of Big Rapids, of counsel), for plaintiff. Patterson & Patterson and Judson A. Fredenburgh, all of Pontiac, for defendants.

Tennessee.

Obligation of subscriber to stock to perform under his subscription contract. Action to recover amounts due on subscriptions to stock of a corporation to be chartered under Tennessee law. The amount of capital to be authorized had not been fixed; no amount of capital to be raised was stated in the subscription agreement signed by defendants. Holding that the corporation is entitled to collect, the Supreme Court of Tennessee says, *inter alia:* "No rule is better settled than that which provides that, when the capital stock of a corporation is fixed, it is implied in every contract of subscription, as a condition precedent to liability thereunder, that all the capital stock must be subscribed. * * * Such a contract, like all others, is to be construed according to the intentions of the parties, and, if the court can see from the surrounding facts and circumstances and the conduct of the parties that the subscriber did not contemplate that any definite sum should be subscribed before he was to become bound, then the general rule does not apply. In Maine, Texas, and Wisconsin a distinction is made between subscribers who become such after, and those who become such before, incorporation. * * * Where the amount of capital stock is fixed by charter or by statute before the subscription is obtained, the general rule applies. Also where the subscription agreement states what the capital stock is to be. Otherwise the court must determine from the paper itself, aided by the surrounding facts and circumstances, what the parties had in mind." Mountain View Development Co. vs. Burnett et al., 46 S. W. (2d) 809. Ely, Buhl & Ely, of Knoxville, for the company. Jennings, Saxton & Wright, of Knoxville, for defendants.

Foreign Corporations

Iowa.

What constitutes "doing business" by unqualified foreign corporation. Here, the Supreme Court of Iowa reverses the court below which had overruled defendant's motion to quash service of process on it. Defendant is a Delaware corporation having its principal place of business in Minnesota; it has not qualified to do business in Iowa. It solicits orders in Iowa through traveling salesmen; all orders taken are sent to the company's main office for either acceptance or rejection; shipments are made from Minnesota; payments are made to the company in Minnesota. The traveling men have no authority to act for the company otherwise than to take orders for its goods. Service was made on a salesman, then in Iowa soliciting orders. The court gives the rule of the United States Supreme Court (246 U. S. 79) for determining whether or not a corporation foreign to a particular state is doing business therein—"The general rule deducible from all our decisions is that the business must be of such nature and character as to warrant the inference that the corporation

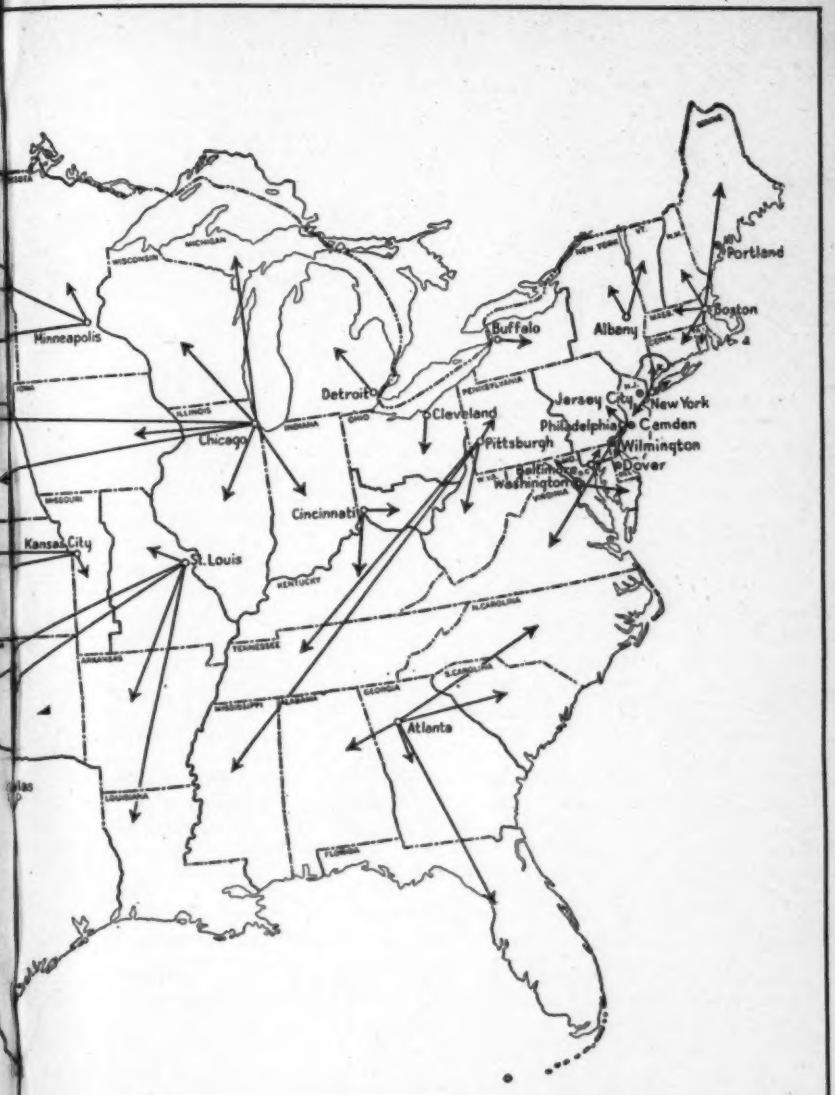
has subjected itself to the local jurisdiction and is by its duly authorized officers and agents present within the state or district where service is attempted." And then: "each case must be determined upon the facts peculiar thereto"; "mere solicitation of orders does not alone and of itself constitute doing business"; "This class of cases generally involves close questions. There is a manifest want of harmony in the decisions. This is the necessary result of the extreme difficulty of applying the law to each given state of facts"; and finally—"appellant was not doing business in this state." Burnham Mfg. Co. vs. Queen Stove Works, 241 N. W. 405. Meighen, Knudson, & Sturtz, of Albert Lea, Minn., and Rob Roy Cerney, of Northwood, for appellant. R. W. Zastrow, of Charles City, for appellee.

Minnesota.

Foreign corporation acquiring and managing Minnesota real estate before being licensed to "do business" in state may not sue in connection with intrastate transaction entered into prior to such licensing. Here, judgment was for defendant. "Plaintiff is a Wisconsin corporation organized for pecuniary profit. It did not comply with our statute (Sec. 7493, Mason's Minnesota Stats. 1927) and become authorized to do business in this state until June 8, 1927. * * * The involved transaction appears from the complaint to have been initiated March 18, 1927, almost three months before plaintiff was domesticated in this state." "The peremptory order for judgment against plaintiff went upon the ground that the record made it appear conclusively that plaintiff had been transacting business in this state before June 8, 1927, and so could not sue upon the claim now involved, which arose out of such business." The Minnesota Supreme Court affirms, saying, *inter alia* in addition to the statements quoted above, that aside from the "involved transaction" "it appears conclusively that plaintiff had been engaged in several real estate deals, had purchased several valuable Saint Paul properties and for a time managed them, collecting and disbursing the rents, all before June 8, 1927." The court states that the statute referred to provides "that the rights of foreign corporations to transact business, to 'acquire, hold or dispose of property within this state, or to sue or maintain any action at law or otherwise in any courts in this state' are all conditioned upon compliance with the statute. Obedience yielded after unlawful business is transacted or a prohibited contract made does not remove the statutory bar." E. C. Vogt, Inc., appellant vs. Ganley Brothers Co. Commerce Clearing House Court Decisions Reporting Service, Req. No. 61873.

New Jersey.

Jurisdiction of Court of Chancery of suit by stockholder of a foreign corporation as representative of the corporation to prevent diversion of corporate property, for an accounting to compel restitution, etc. This is an action by a stockholder of certain Delaware



corporations, as indicated by the caption, above, brought in the Court of Chancery of New Jersey. Taking jurisdiction the court directed the discharge of the order to show cause; to the merits we do not go. Jurisdiction was questioned since, so it was contended, the litigation relates to the internal affairs of a foreign corporation and calls for an exercise of visitorial powers. There is an interesting discussion of the concept of visitorial power. However, except perhaps under special statutory authority "the Court of Chancery has no visitorial power over any corporation. Such power (if any there be) is in the Supreme Court." But—the usual stockholder's suit "is not dependent on any visitorial power, but is a part of the general equity jurisdiction of the court"; restraining the violation of the contract (between the corporation and its stockholders, and among the stockholders severally), and enforcing such a contract where the legal remedy for a breach is inadequate; or, guarding and enforcing the trust relationship between the trustee-directors and the cestui-que-trust-stockholders. "Viewed from this angle, the power of chancery to entertain a stockholder's bill is not determined by the character of the corporation, domestic or foreign. It matters not where the contract or the trust was created which the court is asked to enforce, or where the fraud was concocted which the court is prayed to suppress. A court of equity proceeds in personam against wrongdoers found within its jurisdiction." The extent to which relief (if any) is extended "depends upon the discretion of the court. The court must consider such questions as whether the complainant's (or the company's) right is clear; whether the decree can be enforced; whether enough parties are before the court to enable it to dispose of the entire controversy; and whether it would not be more convenient for the parties to litigate in another jurisdiction. If the right of the corporation asserted by the stockholder complainant depends upon a doubtful construction of the statutes of the state where the corporation is created, this court will usually refuse jurisdiction. * * * I conclude that this court has, and should exercise, jurisdiction in the present case." There is lengthy discussion on the general question of jurisdiction, in such cases. Mayer vs. Oxidation Products Co., Inc., et al., 159 A. 377. Pitney, Hardin & Skinner, of Newark, for complainant. Wall, Haight, Carey & Hartpence, of Jersey City, for defendants.

New York.

Stockholder of foreign corporation having a New York stock transfer agency merely is not entitled to examine corporation's stock books at such agency. In this case The Corporation Trust Company, stock transfer agent in New York City for a New Jersey corporation, was the defendant. The foreign corporation has no office or place of business in New York. Section 113 of the New York Stock Corporation law provides that if a foreign corporation has an office for the transaction of business in New York a stockholders record book must then be maintained therein for inspection

by stockholders but that such book may be kept at the New York stock transfer agency of such corporation if such an agency is employed. The Corporation Trust Company, as transfer agent, after referring to its principal a request by a stockholder of the New Jersey corporation to examine the corporation's stock record books, and after being assured by its principal that it had no office for the transaction of business in New York, refused the request. Thereupon the stockholder sought mandamus allowing examination. At the same time suit was brought against the transfer agency for the $50 per day penalty for refusal, as provided by the law section referred to above; also, the refusing officer was called on to defend a misdemeanor charge brought as provided for in such cases by Section 665 of the Penal Code. The Corporation Trust Company, as transfer agent, advanced the proposition in the mandamus proceedings that as its principal had no office for the transaction of business in New York, otherwise, certainly, than that of its transfer agent, and that as the having of a New York transfer agency of itself, was not the having by the principal corporation of a New York office for the transaction of its business, there was no authority under the law on which the stockholder could base his claim of right to inspect. Supporting reliance was had on Wadsworth vs. The Equitable Trust Company, 153 N. Y. App. Div. 737, and Althause vs. The Guaranty Trust Company, 78 Misc. 181. The Supreme Court denied the petition for mandamus; thereupon the suit for penalty and the misdemeanor charge, both founded on the refusal, were dismissed. On appeal from the mandamus denial to the New York Supreme Court, Appellate Division, First Department, that court affirmed, without opinion, on April 29, 1932, the order of denial. Bolles vs. The Corporation Trust Company. Claudius A. Hand, of New York City (Leon Forst, of New York City, of counsel), for The Corporation Trust Company.

Foreign corporation selling its product through a New York commission house is not thereby "doing business" in, and so "present" in, New York, sufficient to validate service of summons on it. The sole question decided here "is whether at the time of service of the process defendant was doing business within the district in such manner as to warrant the inference that it was present there." The United States District Court, Southern District of New York, grants the motion to set aside the alleged service. The following excerpts from Judge Bondy's opinion sufficiently indicate the activities engaged in by the defendant in New York and the principles on which the decision is founded. "A corporation must be present in the district by its officers and agents carrying on the business of the corporation in order to be said to be found therein. It is not enough that business of the corporation is done in the district. That business must be carried on by the corporation itself. It is not present and doing business in the state merely because it consigns its manufactured products to factors or commission merchants with authority to sell, receive the proceeds and remit. The commission merchants

and not the corporation, in such case, are doing business in the state." "The Simonis Company has not any place of business or any officer, agent, or employee chosen and controlled by it in this state. The business of selling Simonis products is carried on by the firm of Mali & Company, commission merchants, an agency representing and selling the products of many concerns, doing business in its own way for its own benefit, in its own name, and entirely separate and independent of the foreign corporation and without any power of control by the foreign corporation over the commission merchants or their employees." H. Wagner and Adler Co. vs. Societe Anonyme Iwan Simonis et al., decided May 2, 1932. Henry Ward Beer, of New York City, for plaintiff. Duer, Strong & Whitehead (Selden Bacon, of counsel), all of New York City, for the moving defendant.

Pennsylvania.

On what constitutes "doing business"; service of process. A Delaware corporation, having its main office in Baltimore, Maryland, engaged in the business of making and selling men's clothing, maintains a branch office (in rented space) in Pittsburgh, Pennsylvania, in charge of a salaried manager who hires, trains, and supervises a large number of salesmen, who, working on commission, solicit orders, take measurements, and collect initial payments. The orders are sent to Baltimore for "making up"; when the suits are ready they are forwarded to the branch office which notifies the customers who come to the office for fittings; necessary alterations are made there by a tailor, an employee of the company; finally the customer takes away his suit, on completing payment. Collections are deposited in Pittsburgh to the credit of the company. Uncalled for suits are sold over the Pittsburgh counters. Complaint adjustments are made by the Pittsburgh district manager. There are show rooms, sales rooms, and fitting rooms; listings in telephone and other directories; name plate on the building; name on the windows; etc., etc. The United States District Court for the Western District of Pennsylvania says that these activities constitute the "doing of business" in Pennsylvania by the Delaware corporation and make it amenable to service of process in Pennsylvania. However, there was either some defect in the service or in the marshal's return thereof. No order is presently made, ten days time being allowed in which to present an amendment to the return if plaintiff so desires. Joseph Iole vs. Homeland Tailoring Company, Inc., Commerce Clearing House Court Decisions Reporting Service, Requisition No. 61290.

South Dakota.

On what constitutes "doing business" by an unqualified foreign corporation. Before engaging in business in South Dakota a foreign corporation is required to "qualify"—to take certain steps prescribed by the statutes. A contract made by a corporation subject to these provisions that has failed to comply "shall be wholly void, on its

behalf and on behalf of its assigns, but shall be enforcible against it or them." Action by a North Dakota corporation, not qualified to do business in South Dakota; one defense—unqualified foreign corporation doing business in state. The Supreme Court of South Dakota affirms the judgment below for the plaintiff. The following quotations from the court's opinion will suffice for the purposes of this digest. "Shipping merchandise from one state to another upon orders of soliciting agents constitutes commerce between the states, and a foreign corporation engaged in making such shipments is not subject to conditions imposed by a state as a prerequisite to its transacting business within the state." "The distinction between the presence of a foreign corporation for service of process though doing an exclusive interstate business and the absence for other purposes is of no consequence in the case at bar." "Under the undisputed evidence of this case, the sales were for goods from a corporation created under the laws of another state to be shipped into the state of South Dakota. It is not material whether or not the sales of the materials were made pursuant to a contract entered into within this state." Dakota Photo Engraving Co. vs. Woodland, 241 N. W. 510. Bruell & Henderson, of Redfield, for appellant. Sterling, Clark & Grigsby, of Redfield, for respondent.

Taxation

Alabama.

Owning stock of and loaning money to domestic subsidiaries does not constitute doing business by foreign corporation. The Alabama law imposing an annual franchise tax on foreign corporations provides that "Every corporation organized under the laws of any other state, nation, or territory, *and doing business in this state* * * * shall pay annually to the state an annual franchise tax of two dollars on each one thousand dollars of the *actual amount of capital employed in this state.*" Under Alabama law a foreign corporation is required to qualify to do business in the state in order to acquire stock in Alabama corporations. Defendant, here, a Delaware corporation, qualified to do business in Alabama to extent only "to hold stock in Alabama corporations." It holds stock in two Alabama corporations, —which are its subsidiaries; each subsidiary owes money to the Delaware corporation, loaned by the parent to the subsidiary. The State assessed an annual franchise tax on the Delaware corporation based, solely, on the amount of the stock and "accounts and notes receivable," just mentioned. The Alabama Supreme Court affirms the judgment below holding that no tax is due from the Delaware company. It is held that the corporation is not, because of the stated transactions or activities, doing business in Alabama,—the first condition precedent to the right of the state to impose a tax, and so, of course, it has no capital employed in the state in its business there. The court says: "We have no laws nor public policy against subsidiary corporations; indeed some statutes directly con-

tribute to this form of corporate organization. So, when a foreign corporation, not desiring to engage directly in a specific business in this State, but under the laws of this State may and does organize a separate but subsidiary corporation to conduct such business, and such latter corporation, functioning under a corporate franchise granted by this State, conducts such business as a distinct entity, and pays the franchise tax imposed by our laws, the foreign corporation is not engaged in conducting a business in the exercise of its own corporate franchise for which it is liable for a franchise tax." Alabama vs. National Cash Credit Asso., (Commerce Clearing House Court Decisions Reporting Service, Requisition No. 63590).

California.

Franchise tax based on income,—and tax free government bonds. The United States Supreme Court sustains the California corporation franchise tax act to the extent that there may be included in the gross income from which is computed the net income forming the basis of the excise, interest received from tax exempt bonds. By the state constitution bonds of political subdivisions of the state and of its municipalities "shall be free and exempt from taxation." The taxing statute here in question (enacted after adoption of a constitutional amendment authorizing the imposition of a franchise tax of this nature on business corporations) provides in terms (as allowed by such constitutional amendment) that for purposes of the franchise tax gross income shall include all interest received from Federal, state, municipal, and other bonds. In the instant case the Franchise Tax Commissioner in assessing appellant's franchise tax for the year 1928, included in gross income interest derived from improvement district bonds, issued after the adoption of the exemption provision of the constitution referred to above, but before the adoption of the constitutional amendment authorizing the tax and the enactment of the statute imposing it. It was urged that the statute violates the United States Constitution in that it impairs the obligation of the bond contract—the contractual immunity from state taxation of the bonds, acquired under the exemption clause of the state constitution. The United States Supreme Court affirms the judgment below sustaining the tax. Three Justices dissent—largely because of the Court's decisions in the Miller and Macallen cases. These the Court differentiates: the Miller decision (272 U. S. 713), since "there a state statute taxing corporate dividends was framed in such manner as to tax them only so far as they were derived from corporate income from tax exempt bonds of the United States"; the Macallen case (279 U. S. 620), since Massachusetts by amendment of its franchise tax act specifically provided that income from Federal tax exempt bonds is to be included in the income base for the tax whereas such act had theretofore specifically provided that such interest should not be included, this being considered as the manifestation of a distinct purpose to discriminate

against or burden such bonds by imposing, in effect, a tax on the interest therefrom. "But the present case is not one of discrimination"; California "has indulged in no reversal of policy"; and as the act "operates to measure the tax on the corporate franchise by the entire net income of the corporation, without any discrimination between income which is exempt and that which is not, there is no infringement of any constitutional immunity." The Pacific Co., Ltd., vs. Johnson, California State Treasurer, 52 S. Ct. 424. Stuart Chevalier, of Washington, D. C., Joseph D. Peeler, of Los Angeles, and Donald V. Hunter, of Washington, D. C., for appellant.

PORTO RICO BECOMES PUERTO RICO

The official name of our island has been changed to Puerto Rico by action of the Congress (Senate Joint Resolution 36, approved by the President, May 17, 1932).

CORPORATE MEETINGS HELD

During the past few weeks meetings of the corporations named below, among many others, have been held at some one of the offices of The Corporation Trust Company.

Crucible Steel Company of America
The United Light and Power Co.
Curtiss Wright Corporation
The Lambert Company
Coty, Inc.
The Studebaker Corporation
Republic Steel Corporation
Centrifugal Pipe Corporation
Certain-Teed Products Corp.
International Cigar Machinery Co.
Pullman Incorporated
Alpha Portland Cement Company
American Snuff Company
Utah Copper Company
Savage Arms Corporation
Safeway Stores Incorporated
Ingersoll-Rand Company
McKesson & Robbins, Incorporated
Porto Rican American Tobacco Company
The National Cash Register Company

Some Important Matters for June, July, August, September and October

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Anti-trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before August 10.—Domestic and Foreign Corporations.

CALIFORNIA—Franchise Tax based on net income. Second installment due on or before September 15.—Domestic and Foreign Corps.

CONNECTICUT—Income Tax due on or before September 1.—Domestic and Foreign Corporations.

Annual Report due on or before August 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1—Domestic Corporations.

FLORIDA—Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

GEORGIA—Certified Statement for Registration due on or before November 1.—Domestic and Foreign Corporations.

IDAHO—Annual Statement due between July 1 and September 1.—Domestic and Foreign Corporations.

Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

INDIANA—Annual Report due within 30 days after June 30.—Domestic and Foreign Corporations.

Annual Report and License Fee to Industrial Board due in July.—Domestic and Foreign Corporations employing 5 or more persons in Indiana.

IOWA—Annual Report due between July 1 and August 1.—Domestic and Foreign Corporations.

Additional statement due at the time of filing the Annual Report in July.—Foreign Corporations.

MAINE—Annual Franchise Tax due September 1; delinquent one month later.—Domestic Corporations.

MARYLAND—Franchise Tax due on or before August 1.—Domestic and Foreign Corporations.

MICHIGAN—Annual Report and Franchise Tax due during July or August.—Domestic and Foreign Corporations.

MISSISSIPPI—Annual Report and Fee to Factory Inspector due in July. Dom. and For. Corps. employing 5 or more persons in Miss.

Annual Franchise Tax Report and Payment due on or before July 15.—Domestic and Foreign Corporations.

MISSOURI—Annual Statement, Registration and Anti-Trust Affidavit due during July.—Domestic and Foreign Corporations.

MONTANA—Annual License Tax based on Net Income due on or before June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Fee due on or before July 1.—Domestic Corporations.

Annual Report and Fee due during July.—Foreign Corps.

Annual Statement due on or before September 15.—Foreign Corporations.

NEVADA—Annual List of Officers and Designation and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

NEW JERSEY—Franchise Tax due in August.—Domestic Corporations.

NEW YORK—Annual Franchise (Income) Tax Return (Form 3IT—Art. 9-A, Tax Law) due on or before July 1.—Domestic and Foreign Business Corporations.

NORTH CAROLINA—Annual Franchise Tax due on or before October 1.—Domestic and Foreign Corporations.

Capital Stock Report to determine amount of franchise tax due on or before July 1.—Foreign Corporations.

NORTH DAKOTA—Corporation Report due during July.—Domestic and Foreign Corporations.

OHIO—Annual Franchise Tax due on or before July 15.—Domestic and Foreign Corporations.

OKLAHOMA—Annual Capital Stock Affidavit due between July 1 and August 1.—Foreign Corporations.

Annual License Tax Report and Payment due on or before July 31.—Domestic and Foreign Corporations.

OREGON—License Fee due between July 1 and August 15.—Foreign Corporations.

Annual License Fee due within 30 days after July 15.—Domestic Corporations.

Annual Statement due during June; delinquent August 15.—Domestic and Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due July 1; delinquent after July 15.—Domestic and Foreign Corporations.

Semi-annual Report to Chief Factory Inspector due in October and April.—Domestic and Foreign Corporations employing 5 or more persons in Rhode Island.

TENNESSEE—Annual Report and Franchise Tax due on or before July 1.—Domestic and Foreign Corporations.

Income Tax Return and Payment due on or before August 15.—Domestic and Foreign Corporations.

UNITED STATES—Second and Third Installments of Income Tax due June 15 and September 15, respectively.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

UTAH—Annual Report to the Industrial Commission due in July.—Domestic and Foreign Corporations employing 3 or more persons in Utah.

WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—License Tax Statement due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal places of business or chief works are located in other states.

WYOMING—Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Amateur Corporate Representation. A booklet dealing with some of the weaknesses of placing a company's statutory representation in the hands of business employes or others not trained in the matters involved.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1931.

Incorporation in Canada Under the Dominion Act. Explains the procedure for incorporation of Canadian companies, the requirements, taxes, maintenance of office, etc., and all the special features of the Dominion Companies Act. Attorneys with a client who may, because of tariff barriers, be considering the organization of a Canadian company to conduct the company's Canadian or export business, will find this pamphlet extremely useful.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

What Constitutes Doing Business. (Revised to April, 1930.) A 208-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them also accessible either by case name or topic.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

Why Corporations Leave Home. This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.